



# House of Representatives

General Assembly

**File No. 318**

January Session, 2015

Substitute House Bill No. 6743

*House of Representatives, March 31, 2015*

The Committee on General Law reported through REP. BARAM of the 15th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE TASK FORCE ON CADMIUM IN CHILDREN'S JEWELRY.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective October 1, 2015, and applicable to violations*  
2       *occurring on or after said date*) (a) As used in this section:

3       (1) "Cadmium" means elemental cadmium and any compounds or  
4       alloys which contain cadmium;

5       (2) "Children's jewelry" means any jewelry, including charms,  
6       bracelets, pendants, necklaces, earrings or rings, and any component  
7       thereof, that is designed or intended to be worn by children twelve  
8       years of age or younger; and

9       (3) "Commissioner" means the Commissioner of Consumer  
10      Protection.

11      (b) Each person who manufactures children's jewelry for sale or  
12      distribution in this state and each person who distributes children's

13 jewelry in this state shall register with the Department of Consumer  
14 Protection on a form prescribed by the commissioner and pay an  
15 annual registration fee of fifty dollars. The commissioner shall develop  
16 a testing compliance form to be completed by all such registered  
17 manufacturers and distributors.

18 (c) No person shall manufacture for sale in this state or distribute in  
19 this state any children's jewelry that contains cadmium at more than  
20 the amounts specified in subsection (d) or (e) of this section.

21 (d) The commissioner shall require manufacturers and distributors  
22 to certify in writing on a compliance form developed by the  
23 commissioner that all children's jewelry manufactured for distribution  
24 in this state or for sale in this state has been tested for cadmium using a  
25 total content test. The passing standard for such total content test shall  
26 be not more than .03 per cent by weight. Total content test methods  
27 shall be applied separately to each component part of such jewelry and  
28 may include, but shall not be limited to, x-ray fluorescence  
29 spectrometry analysis or total digestion testing, as specified by the  
30 latest ASTM standards. The commissioner shall not require leaching or  
31 extraction (solubility) testing for children's jewelry that has not met the  
32 total content test passing standard.

33 (e) In addition to the total content test required pursuant to  
34 subsection (d) of this section, the commissioner, in the commissioner's  
35 discretion, may require written verification from such manufacturers  
36 and distributors of a surface coating test for cadmium in children's  
37 jewelry that contains paint or any other surface coating. The passing  
38 standard for such surface coating test shall be not more than .0075 per  
39 cent by weight.

40 (f) (1) (A) Except as provided in subparagraph (B) of this  
41 subdivision, any person who violates subsection (c) of this section shall  
42 be guilty of a class B misdemeanor.

43 (B) For any offense committed with intent to defraud or mislead, or  
44 for any second or subsequent offense, any person who violates

45 subsection (c) of this section shall be guilty of a class A misdemeanor,  
46 except that such person may be fined not more than five thousand  
47 dollars.

48 (2) No person shall be subject to the penalties set forth in  
49 subdivision (1) of this subsection if such person received, delivered or  
50 proffered delivery of the children's jewelry in good faith. Any person  
51 claiming a good faith defense under this subdivision shall furnish, on  
52 request of an officer or employee duly designated by the  
53 commissioner, the name and address of the individual or entity from  
54 whom such person purchased or received such children's jewelry, and  
55 shall also furnish copies of all documents in the possession of such  
56 person, if any, pertaining to the delivery of the children's jewelry to  
57 such person.

58 (g) A violation of subsection (c) of this section shall be an unfair or  
59 deceptive act or practice in the conduct of trade or commerce pursuant  
60 to subsection (a) of section 42-110b of the general statutes.

61 (h) Any person required by an order of the commissioner to pay a  
62 fine, cease and desist from using any method, act or practice declared  
63 unlawful pursuant to section 42-110b of the general statutes or to make  
64 restitution may appeal from such order in accordance with the  
65 provisions of section 4-183 of the general statutes. Any appeal brought  
66 under this subsection shall be privileged with respect to assignment  
67 for trial.

68 (i) The commissioner, after consultation with the Commissioner of  
69 Public Health, shall develop and provide information to the public on  
70 the Department of Consumer Protection's Internet web site regarding  
71 safety issues related to cadmium in children's jewelry and  
72 recommended precautions parents may take to reduce or eliminate  
73 such safety issues.

74 Sec. 2. Section 21a-12d of the general statutes is repealed. (*Effective*  
75 *October 1, 2015*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015, and applicable to violations occurring on or after said date</i>	New section
Sec. 2	<i>October 1, 2015</i>	Repealer section

**GL**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 16 \$</b>	<b>FY 17 \$</b>
Consumer Protection, Dept.	GF - Cost	70,980	60,230
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Cost	23,086	23,086
Resources of the General Fund	GF - Potential Revenue Gain	Less than 40,000	Less than 40,000

**Municipal Impact:** None

### **Explanation**

The bill results in a cost to the state of \$94,066 in FY 16 and \$83,316 in FY 17 due to the need of a Consumer Protection Product Safety Inspector (AR-21) within the Department of Consumer Protection. Additionally the bill results in a potential General Fund revenue gain of less than \$40,000 in both FY 16 and FY 17.

Costs in FY 16 include a salary of \$59,730; fringe benefits of \$23,086; \$1,000 for field equipment; \$500 in Other Expenses; \$9,000 for testing costs and \$750 to calibrate an x-ray fluorescence spectrometer. The Consumer Product Safety Inspector will regulate the registrations and compliance forms, produce the fact sheets, investigate complaints, perform investigations and field testing.

The bill changes the standards for cadmium in children's jewelry and also starts the requirements ten months earlier than under current statute. This results in the costs for the testing and spectrometer

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 38.65% of payroll in FY 16 and FY 17.

calibration in FY 16 which would have otherwise not have occurred until FY 17. It is anticipated that 75 tests at a cost of \$150 per test would occur yearly.

The bill creates a new misdemeanor for the manufacturing for sale or distribution of children's jewelry that contains more than the allowable cadmium levels. It is anticipated that less than 10 violations will occur, resulting in a revenue gain through fines of \$10,000 - \$35,000.

Additionally the bill sets a fee of \$50 for manufacturers and distributors of children's jewelry. There are an estimated 100 such entities, therefore the bill results in a revenue gain of \$5,000 in FY 16 and FY 17.

### ***The Out Years***

The annualized ongoing fiscal impact identified in FY 17 above would continue into the future subject to inflation, the number of manufacturers and distributors and the number of violations.

**OLR Bill Analysis****sHB 6743*****AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE TASK FORCE ON CADMIUM IN CHILDREN'S JEWELRY.*****SUMMARY:**

This bill:

1. increases, from .0075% to .03% (by weight), the maximum amount of cadmium allowed in children's jewelry that is manufactured for sale in Connecticut or distributed in the state and
2. caps, at .0075% (by weight), the amount of cadmium allowed in the jewelry's surface coating.

It does so by repealing the current .0075% total cadmium limit that takes effect July 1, 2016 and replacing it with the new thresholds. Cadmium includes elemental cadmium and any compounds or alloys containing it.

The bill sets cadmium content testing requirements. Manufacturers and distributors must certify in writing to the consumer protection (DCP) commissioner that their children's jewelry was tested for cadmium using a total content test. The commissioner may also require written testing verification for the jewelry's surface coating. The bill generally makes manufacturers and distributors who violate the cadmium limits subject to civil and criminal penalties.

The bill requires those who manufacture children's jewelry for sale or distribution or actually distribute the jewelry in the state to (1) register with DCP on a form the commissioner prescribes and (2) pay an annual \$50 fee.

Lastly, the bill requires the DCP commissioner, after consulting the public health commissioner, to develop and provide to the public, on DCP's website, information on (1) safety issues related to cadmium in children's jewelry and (2) recommended precautions parents can take to reduce or eliminate the safety issues.

EFFECTIVE DATE: October 1, 2015, and applicable to violations occurring on or after that date.

### **CHILDREN'S JEWELRY AFFECTED**

The bill covers jewelry designed or intended to be worn by children under age 13. It includes charms, bracelets, pendants, necklaces, earrings, rings, and any of their components.

### **TESTING REQUIREMENTS**

#### ***Testing Compliance***

Under the bill, the DCP commissioner must require manufacturers and distributors to certify in writing, on a testing compliance form he develops, that all children's jewelry manufactured for distribution or sale in Connecticut was tested for cadmium using a total content test. To pass the test, the jewelry cannot have more than .03% (by weight) of cadmium.

#### ***Test Methods***

The total content test methods must be applied separately to each jewelry component. The methods may include x-ray fluorescence spectrometry analysis (i.e., analysis of chemical composition using x-rays and wave length measurement) or total digestion testing (i.e., breakdown of a sample into its component parts, typically through acid immersion), as specified by the latest ASTM standards (see BACKGROUND). The bill prohibits the commissioner from requiring leaching or extraction (i.e., solubility) testing for children's jewelry that has not met the total content standard.

In addition to the total content test, the commissioner, at his discretion, may require manufacturers and distributors to provide



written verification of a surface coating test for cadmium in children's jewelry with a painted or coated surface. The passing standard for the surface coating test is .0075% (by weight).

## **PENALTIES**

### ***Criminal***

Under the bill, anyone who manufactures for sale or distributes in Connecticut children's jewelry with more than the allowable cadmium commits a class B misdemeanor (punishable by up to six months in prison, up to a \$1,000 fine, or both). A subsequent violation, or one committed with the intent to defraud or mislead, is a class A misdemeanor (punishable by up to one year in prison, up to a \$2,000 fine, or both), except the bill caps the fine at \$5,000.

The bill's criminal penalties do not apply to anyone who receives, delivers, or offers for delivery the children's jewelry in good faith. The person must provide, at DCP's request, (1) the name and address of the individual or entity who sold or provided the children's jewelry and (2) copies of all documents related to the delivery of the jewelry.

### ***Connecticut Unfair Trade Practices Act (CUTPA)***

The bill makes it an unfair or deceptive trade practice, in violation of CUTPA, to manufacture for sale or distribute in this state children's jewelry that is over the allowed thresholds.

Under the bill, a person can appeal, under the Uniform Administrative Procedure Act, if the DCP commissioner requires the person to (1) pay a fine; (2) cease and desist from using any method, act, or practice deemed unlawful under CUTPA; or (3) make restitution. The bill gives these appeals priority in trial assignment.

## **BACKGROUND**

### ***Cadmium***

Cadmium is a natural metallic element found in the earth's crust. The U. S. Department of Health and Human Services has determined that cadmium and its compounds are human carcinogens. Some

animal studies indicate that the young (1) absorb more cadmium than adults and (2) are more susceptible than adults to bone loss and decreased bone strength from cadmium exposure.

**ASTM**

ASTM International, formerly known as the American Society for Testing and Materials, is a non-profit, international organization that provides a forum to develop and publish voluntary consensus standards for materials, products, systems, and services.

**CUTPA**

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys' fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

**Related Bill**

sHB 6741, File 55, favorably reported by the Children's Committee, contains similar requirements but has a lower total content standard (.01%) and an unspecified registration fee.

**COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/12/2015)